IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2425 OF 2005

Mohammed Jalil s/o. Mohibhul Haq Choudhary ..Applicant

versus

Namdar Balasaheb Desai ..Respondents

Mr. A. S. Karwande for the Applicant / Appellant.

CORAM : A.M. KHANWILKAR, J.
DATE : 1ST MARCH,2006

P.C. :

1. Heard counsel for the appellant.

2. The suit filed by the appellant has been dismissed by the lower court. The suit was simplicitor for injunction. Substantail relief claimed in the suit is at page No. 8. The same reads thus:

> "that the defendants, her servants, agents, and/or any other person/s acting on her behalf, be restrained by an order and injunction of this Honourable Court, from dispossessing the plaintiff from the

premises adm. about 20’x30’ having Pan shop of 15’x15’ made up of partly Patra Wall & B.M. Wall with A.C.C. Sheet Roof bearing Census No. CEN 31 (1&2) situated at Choudhary Khan Compound, Near Balasaheb Society & Home Guard, N.S.S. Road, Asalfa Village, Ghatkopar, Mumbai 400 084, except than due process of law and/or entering into and/or interfering in any manner thereof;"

3. Indeed, the learned counsel appearing for the appellant may be right in relying upon the findings recorded by the trial court in the earlier part of the judgment, wherein it is held that the evidence on record does not indicate that the defendants society is the owner in respect of CTS No. 174/1 on which the suit structure was allegedly standing. Even so, no fault can be found with the final conclusion reached by the trial court in dismissing the suit having regard to the findings recorded in paragraph 21 of the impugned judgment. On analysing the evidence on record, the court below has rightly found that the disputed premises / structure was already demolished by the Corporation on the date of filing of the suit. The demolition

of the suit structure was undertaken by the Corporation on 7.6.2000, which fact is supported from the plaintiff's document being letter dated 14.1.2000 sent to DMC (Exhibit 'M' collectively). If the structure was not in existence on the date of filing of the suit, the question of granting any injunction as prayed by the plaintiff does not arise. The suit has been therefore rightly dismissed by the trial court.

4. To get over this position, counsel for the appellant contended that the entire suit structure was not demolished by the Corporation. Except the ipse dixit of the appellant, there is no document to support the stand pressed into service before this court that the suit structure was not fully demolished by the Corporation as has been found by the court below.

5. Counsel for the appellant then contended that if the suit structure was demolished by the Corporation and if the finding is given by the trial court in favour of the plaintiff - appellant in the earlier part of the judgment, the trial court was obliged to grant injunction against the defendants

society. This argument clearly overlooks that the subject matter of the suit was not in existence on the date of filing of the suit. The question of granting any injunction to plaintiff against any person in respect of such premises, does not arise.

6. Taking any view of the matter, no interference is called for with the findings reached by the trial court for dismissal of the suit. The Appeal stands disposed of accordingly.

1.3.2006 A. M. KHANWILKAR, J.